

proper venue for instituting suit. . .” (Pl.’s Reply p. 3) (emphasis added). As can be seen from the attached affidavit of an individual who actually negotiated the contracts at issue, the parties did not specifically negotiate this provision. *See* Affidavit of John R. Baker attached hereto as Exhibit A (hereinafter “Baker Affidavit”). Rather, Article 13 is a standard provision that was drafted by Tyler and is included as a matter of course in its contracts. (Baker Affidavit ¶ 6) Neither Tyler nor the County specifically negotiated or bargained for any of the language found in Article 13. *Id.* To state that the parties “specifically negotiated this provision” and to further suggest that they “intended” for the plaintiff to have the sole choice between state or federal court in Missouri is a misstatement of fact with absolutely no factual support and is misleading.

For the reasons stated in Tyler’s Notice of Removal and Response, Tyler respectfully requests that Plaintiff’s Motion to Remand be denied.

Dated: May 27, 2009

Respectfully Submitted,

/s/ Andrew B. Russell

Craig W. Budner
Texas State Bar No. 03313730
Andrew B. Russell
Texas State Bar No. 24034661
Courtney Barksdale Perez
Texas State Bar No. 24061135
K&L Gates LLP
1717 Main Street
Suite 2800
Dallas, Texas 75201
P:(214) 939-5500
F:(214) 939-5849
craig.budner@klgates.com
andrew.russell@klgates.com
courtney.perez@klgates.com

Steven E. Garlock
E.D. Missouri Bar No. 3184
B. Matthew Struble
E.D. Missouri Bar No. 498813
Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
P: (314) 552-6000
F: (314) 552-7425
sgarlock@thompsoncoburn.com
mstruble@thompsoncoburn.com

**ATTORNEYS FOR DEFENDANT TYLER
TECHNOLOGIES, INC.**

CERTIFICATE OF SERVICE

I certify that the foregoing instrument was served upon all counsel of record by the Court's electronic filing system on May 27, 2009.

/s/ Andrew B. Russell